

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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WILLIAM DIGIANNI,

Plaintiff,

- against -

ORDER
09-CV-3653 (RRM) (LB)

ORRICK, HERRINGTON & SUTCLIFFE, LLP;
IRA ROSENSTEIN; LIPMAN & PLESUR LLP;
and ROBERT LIPMAN,

Defendants.

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MAUSKOPF, United States District Judge.

Plaintiff, who is proceeding *pro se*, recently filed a petition for a writ of mandamus before the United States Court of Appeals for the Second Circuit, seeking the disqualification of the undersigned judge of this court. Plaintiff correctly observes that the undersigned, then acting as United States Attorney for the Eastern District of New York, appeared on behalf of the respondent in a separate mandamus proceeding,¹ also initiated by Plaintiff, stemming from prior litigation in this court. Although Plaintiff never brought this issue before the undersigned, having first raised it in a mandamus petition filed with the circuit court just days ago, the Court nevertheless has reviewed the record and finds that its disqualification is warranted in this case. Given the undersigned's direct, adversarial role as a former government attorney in litigation brought by this same Plaintiff arising out of the same facts and placing in controversy the same facts and issues as the instant proceeding, and in an abundance of caution, the undersigned is hereby recused pursuant to 28 U.S.C. § 455.

Furthermore, in light of the foregoing, the Court hereby vacates its Memorandum and Order, entered September 16, 2009, dismissing the complaint as frivolous. The Clerk of Court is

¹ *In re William DiGianni*, No. 06-4098-op (2d Cir. filed Sept. 1, 2006).

hereby directed, pursuant to Federal Rule of Civil Procedure 60(b), to vacate the judgment entered September 17, 2009 and to reassign this case in manner consistent with this Order.

SO ORDERED.

Dated: Brooklyn, New York
September 29, 2009

s/RRM

ROSLYNN R. MAUSKOPF
United States District Judge